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OFFICE OF PETITIONS

In re Application of :
Fortin, et al. :
Application No. 10/760,075 : ON PETITION
Filed: January 18, 2004 :
Attorney Docket No. PUS-H002-001 :

This is a decision on the petition under 37 CFR 1.53 filed November 1, 2004, requesting that the above-identified application be accorded a filing date of January 18, 2004, including six (6) sheets of drawings as part of the original disclosure of the application.

The application was submitted on January 18, 2004. However, on September 17, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice Of Incomplete Nonprovisional Application" (Notice) that stated the application had not been accorded a filing date, and that the application was deposited without drawings.

In response, on November 1, 2004, six (6) sheets of drawings and the instant petition were submitted. Petitioner argues:

"1. The US was indicated as a designated state in Petitioner's Request filing for International Application...

2. As a designated state, the WIPO International Bureau communicated a copy of Petitioner's International Application, including the subject drawings, to the Office...

3. A copy of the subject drawings was on deposit with the Office upon the transmittal of Petitioner's 35 USC 371 US national stage Transmittal Letter to the Office on 18 January 2004.

4. Therefore, the refusal to grant a filing date on the ground that the "application was deposited without drawings" is a mistake in the Office, and the application is entitled to a filing date."

The arguments have been considered, but are not persuasive. The Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the official file reveals zero (0) sheets of drawings were filed on January 18, 2004. Drawings were not filed on January 18, 2004, since no such drawings are present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503.

A copy of a postcard receipt that would indicate receipt of six (6) sheets of drawings on January 18, 2004 has not been submitted. If petitioner has a postcard receipt date stamped by the Office that indicates receipt six (6) sheets of drawings on January 18, 2004, then the postcard receipt or a copy thereof should have been supplied.

However, a review of the priority document submitted on even date, January 18, 2004, reveals that it includes six (6) sheets of drawings which are identical to the six (6) sheets which were intended to be filed on January 18, 2004, and which appear to correspond to the drawings and Figures described in the specification. Accordingly, on petition, the six (6) sheets of drawings in the priority document will be construed as the drawings for this application for filing date purposes.

In view of the above, the petition is granted.

The application will be processed and examined using the copy of the six (6) sheets of drawings supplied on November 1, 2004.

Please note, the petition fee will not be refunded, since the petition was not necessitated by any error on the part of the USPTO and the instant petition was required in order to accord the requested filing date.

This application will be returned to OIPE for further processing with a filing date of January 18, 2004, using the six (6) sheets of drawings, supplied on November 1, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3228.

A handwritten signature in black ink, appearing to read 'Ed T', with a long horizontal flourish extending to the right.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office